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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,416	05/11/2001	Necdet Uzun	12801-007001	7677

7590 08/23/2004

Fish & Richardson P.C.  
2200 Sand Hill Road  
Suite 100  
Menlo Park, CA 94025

EXAMINER

LUU, LE HIEN

ART UNIT PAPER NUMBER

2141

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/854,416

Applicant(s)

UZUN ET AL.

Examiner

Le H Luu

Art Unit

2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 5/11/01 to 3/06/02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 22-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-9,13 and 17-21 is/are rejected.
- 7) ☒ Claim(s) 3,4,10-12 and 14-16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/30/01 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

1. Claims 1-28 are presented for examination.
2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-21, drawn to computer to computer data transfer regulating, classified in class 709, subclass 232.
  - II. Claims 22-28, drawn to input / output data buffer, classified in class 710, subclass 52.
3. The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and Group II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention Group I has separate utility such as determine allowed usage for a node for servicing transmit and transit traffic, Group II has separate utility such as service transmit and transit buffers based on threshold values. See MPEP § 806.05(d).
4. The inventions are distinct, each from the other because of the following reasons:
  - a. These inventions have acquired a separate status in the art as shown by their different classification
  - b. The search required for one Group is not required for the other Groups

For the reasons above restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Mr. Samuel Campbell on 08/16/2004 a provisional election was made without traverse to prosecute the invention of GROUP I, claims 1-21. Affirmation of this election must be made by applicant in responding to this Office action. Claims 22-28 are withdrawn from further consideration by the Examiner, 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Applicant is requested to formally cancel the non-elected claims.

8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

9. Figures 1-2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

10. Claims 2 and 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claims 2 and 13, it is not clear which "the usage data" is being forward to an upstream node. For purpose of examination, Examiner assume that the usage data of the node is being forwarded to an upstream node.

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the

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international application designated the United States and was published under Article 21(2) of such treaty in the English language.

or

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

12. Claims 1-2, 5-9, 13, and 17-21 are rejected under 35 U.S.C. § 102(e) as being anticipated by Lothberg et al. (Lothberg) patent no. 6,775,295.

13. As to claim 1, Lothberg teaches the invention as claimed, including a method for servicing transit and transmit traffic in a node of a network, the network including a plurality of nodes connected by first and second rings formed by two or more transmission media, the method comprising:

receiving usage data from a downstream node (col. 6 lines 52-59);

Identifying a first weighted value associated with a provisioning rate associated with the downstream node and a second weighted value associated with a provisioning rate of the node (col. 6 lines 52-59; col. 9 lines 36-52);

determining an allowed usage for the node using the usage data and the first and second weighted values (col. 7 line 34 - col. 9 line 52); and

servicing transmit and transit traffic received at the node including limiting the servicing of the transmit traffic in accordance with the determined allowed usage (col. 7 line 34- col. 9 line 52).

14. As to claim 2, Lothberg teaches determining usage data for the node based on the usage data received from the downstream node; and forwarding the usage data of the node to an upstream node (col. 7 lines 34-50).

15. As to claims 5-7, Lothberg teaches receiving the first weighted value with the usage data as a scalar from the downstream node; and retrieving the first and second weighted values from a table (col. 7 line 34 - col. 9 line 52).

16. Claims 8-9, 13, and 17-21 have similar limitations as claims 1-2 and 5-7; therefore, they are rejected under the same rationale.



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17. Claims 3-4, 10-12, 14, and 15-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Le H. Luu, whose telephone number is (703) 305-9650. The examiner can normally be reached Monday through Friday from 7:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached at (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7240.

Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

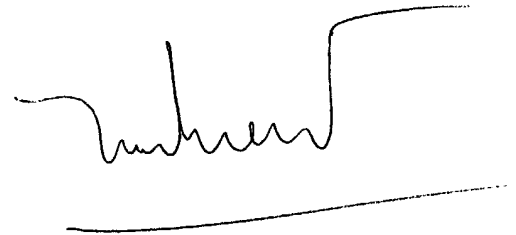
or faxed to:

(703) 872-9306, (for formal communications; please mark  
"EXPEDITED PROCEDURE").

Or:

(703) 872-9306 (for informal or draft communications, please label  
"PROPOSED" or "DRAFT").

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal  
Drive, Arlington. VA., Sixth Floor (Receptionist).

A handwritten signature in black ink, appearing to read 'Le Hien Luu', with a long horizontal line extending to the right.

LE HIEN LUU  
PRIMARY EXAMINER

August 17, 2004